

22 June 1973

NOTE FOR: Mr. Maury

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Attached is my proposal for an Agency position on the Proxmire bill. Also attached are [REDACTED] talking paper and [REDACTED] comments and alternative language. Sharon came in and typed this up Saturday and I asked her to give a copy to the three of you first thing Monday.

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Obviously, you will want to review whatever position you are going to recommend to Colby with our staff guys on the Hill.

As you know, Harrington introduced a companion measure to S.1935 and we have a formal request from Hebert for our comments. In the absence of a statement by Harrington in the Congressional Record upon introduction of the bill, I thought we might try a novel approach since Proxmire's statement is so important to our position, and that in effect would be to write Hebert a letter (draft attached) forwarding our report to Stennis on the earlier introduced Senate companion bill.

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DRAFT: 11m/22 June 73

Honorable John C. Stennis, Chairman  
Committee on Armed Services  
United States Senate  
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request of 8 June 1973 for the recommendations of this Agency on S. 1935, "To amend section 102 of the National Security Act of 1947 to prohibit certain activities by the Central Intelligence Agency and to limit certain other activities by such Agency."

In view of the nature of our comments with respect to certain provisions of the bill, we have classified this report Secret.

S. 1935 adds a new subsection to section 102~~(d)~~ of the National Security Act of 1947, as amended (50 U. S. C. 403). Based upon the language of the bill and the sponsor's statement when it was introduced, the purpose of the bill is to modify the authority of the National Security Council to prescribe certain functions as duties for this Agency in three areas: (1) internal security functions, (2) illegal domestic activities, and (3) "covert action" abroad.

#### Internal Security Functions

The provisions of the bill relating to internal security functions appear in new subsection (g)(1)(A) and (B). According to the sponsor's statement in introducing the legislation on 4 June 1973, these provisions are meant to tighten up the first proviso in subsection 102(d)(3) of the

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National Security Act of 1947 that the CIA shall have no "police, subpoena, law-enforcement powers, or internal-security functions." The sponsor views the phrase "internal-security functions" as a "blanket disapproval for any active domestic police type functions." His stated concern is that other provisions in the CIA section of the National Security Act of 1947 can be cited for justifying "operations domestically" and "even domestic operations." In light of this stated concern, it is important to review the meaning of the proviso in question.

(a) the word "powers" in the phrase "police, subpoena, law-enforcement powers" means legal ability or authority. The Agency has no police, subpoena, or law-enforcement powers, has never attempted to exercise such powers, and its legal inability and lack of authority to exercise such powers is abundantly clear.

(b) the meaning of the phrase "internal-security functions" is equally clear when considered in the context of both the legislation in which it appears and the legislative history which surrounds it.

The heart of the Central Intelligence Agency section of the National Security Act of 1947 is subsection 102(d) which sets forth the duties of the Agency under the direction of the National Security Council. The proviso appears in that paragraph of that subsection which deals specifically with the correlation, evaluation, and dissemination of intelligence information.

The legislative history of section 102 of the National Security Act reflects congressional intent that there be no confusion between the pursuit of intelligence abroad and police powers at home. In 1947 it was very clear that the merging of these two functions was characteristic of totalitarian states. The concern simply put was that there be no "gestapo in the United States." While this country has never had a national police force, experience with the conduct of totalitarian states was uppermost in the nation's mind.

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In light of these concerns, a proviso was written into law to add to the assurance that the Agency would not be engaged domestically in collecting information on citizens of the United States who, unlike Agency employees and others having access to our information, are not of legitimate interest to the Agency. The proviso was patterned after the wording in paragraph 4 of the 22 January 1946 Presidential directive which established the Central Intelligence Group, the predecessor organization of the Central Intelligence Agency (i. e., "4. No police, law-enforcement, or internal-security functions shall be exercised under this directive.").

We do not view any of the subsections of 102(d) as authority to override the proscriptions in the proviso that the CIA shall have no police, subpoena, law-enforcement powers, or internal-security functions. However, neither do we view that proviso as prohibiting this Agency from protecting its installations in the United States, conducting security investigations of its personnel and persons having a need for access to its information, and, of course, engaging in activities in the United States solely related to the Agency's foreign intelligence mission.

It is our view that the functions that can be assigned to this Agency under subsection 102(d) are limited to foreign intelligence activities even though the word "foreign" is absent from the subsection. While we believe the absence of the word is still justified, its insertion in the subsection would be preferable to (g)(1)(A) and (B) of S. 1935 and would appear to substantially meet the sponsor's objectives. With the word inserted, subsection 102(d) would read as follows:

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"(d) for the purpose of coordinating the foreign intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council...."

#### Illegal Domestic Activities

The provision of the bill relating to illegal domestic activities appears in subsection (g)(1)(C). This provision would preclude the Agency from engaging in "any illegal activity within the United States." This Agency sees no merit in passing a law forbidding this Agency from doing what it is already forbidden to do under the law of the land. Moreover, the very enactment of such a law would suggest that the Agency has conducted such illegal activities in the past. This suggestion has no foundation in fact. Further, the enactment of the provision could be interpreted as legally condoning such activities if they occurred prior to the provision's enactment.

#### "Covert Action" Abroad

The provision of the bill relating to "covert action" abroad appears in new subsection (g)(1)(D). While it is proposed as a tightening up of current law, it actually constitutes a specific authorization for the CIA under the direction of the National Security Council to engage in "covert action in any foreign country" with the specific written approval of the oversight committees of the CIA in the Congress. The statutory definition

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set forth in new subsection (g)(2) is much less specific than the sponsor's statement when the bill was introduced:

"Paramilitary operations in support of foreign governments or dissident forces; financial support for individuals, governments, unions, political parties or other internal organizations;

"Operations in support of political allies such as acquiring politically damaging information or the creation of such information or the supplying of internal security techniques and equipment;

"Exchange programs for social, economic or long term political reasons; economic manipulations of companies, governments, commodity supplies." (119 CONG. REC. S. 10221. Daily ed. June 4, 1973.)

There is no specific authorization for foreign espionage as a government program in U. S. Statutes. This is also true of the public laws of all other countries. It is generally agreed that espionage is a violation of international law as an illegal invasion of sovereignty. Because of this, the CIA section of the National Security Act purposely makes no mention of foreign espionage, even though at the time of passage it was abundantly clear that such activity was within the ~~charge~~<sup>r</sup> to be assigned to the Agency by the National Security Council.

Covert action as defined by the sponsor of S. 1935 includes paramilitary operations, a much more serious invasion of national sovereignty than secret intelligence collection inasmuch as it could be construed as armed aggression. Consequently, under new subsection (g)(1)(D), a

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paramilitary operation, or allegation of same, would differ little from a declaration of war since under the provision the action must be directed by the President of the United States, who is the Chairman of the National Security Council, and approved by the Congress through its duly authorized agents, the four CIA oversight committees.

The above considerations raise a serious question concerning the constitutionality of subsection (g)(1)(D). Moreover, the provision constitutes an acknowledgement that the U. S. Government engages in covert action against foreign nations. Thus, the provision is not only patently unacceptable as a legal principle under the Constitution of the United States, it is also such under the Charter of the United Nations and other international law.

In view of the above, it is recommended that S.1935 not be favorably acted upon by your Committee.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of S.1935 in its present form would not be consistent with the Administration's objectives.

Sincerely,



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